No. 15814

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 942, AFL-CIO, RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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In its brief the Union does not contest the Board's findings that the two-fold object of its picketing and other conduct was to obtain from Alloy recognition as the exclusive bargaining agent of its employees, and a contract compelling membership in the Union as a condition of employment. Nor does the Union contest the further finding that it did not represent a majority of Alloy's employees during the events in this case, so that accession to these objectives by Alloy would have resulted in unfair labor practices on its part. The Union nevertheless contends that it committed no unfair labor practices, except insofar as it sought, by its picketing, to obtain a union shop—which conduct the Union concedes (br. 53) the Board

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properly found to be violative of Section 8 (b) (2) of the Act.

It is the Union's position, first, that picketing to compel immediate recognition on behalf of a union which does not represent a majority of the employees does not restrain or coerce employees within the meaning of Section 8 (b) (1) (A)—a position which it acknowledges (br. 42, n. 50) is contrary to the reasoning of this Court's decision in *Capital Service, Inc.* v. *N. L. R. B.,* 204 F. 2d 848. Second, the Union contends that the use of a "We Do Not Patronize" list is in any event distinguishable from picketing, so that, insofar as it sought to further its objectives by the former means, not even the finding of an 8 (b) (2) violation is warranted. Finally, the union contests the breadth of the Board's order.

In this reply brief, we shall address ourselves to those of the Union's arguments, on each of these phases of the case, which were not fully anticipated in our opening brief.

I. The contention that the Union's picketing did not violate Section 8 (b) (1) (A) of the Act

A. The Union's conclusion that recognition of picketing by a minority union is not violative of Section 8 (b) (1) (A) rests principally on the argument that "By Section 8 (b) (4) (C) Congress has expressed the sole extent to which it intends to regulate as an unfair labor practice picketing by a union of an employer to secure that employer's recognition of it * * *" (br. 9). The history of Sections 8 (b) (4) (C) and 8 (b) (1) (A), however, reveals just the opposite.

Thus, Section 8 (b) (4) (C) was contained in the Senate bill as it was reported out of committee, while Section 8 (b) (1) (A) was not. S. 1126, 80th Cong., 1st Sess., p. 15, I Leg. Hist. 113. Accordingly, the most that may be inferred from Section 8 (b) (4) (C), when it appeared as part of the Senate bill, is that it went as far as a majority of the *Senate Labor Committee* thought Congress should go in regulating union efforts to compel recognition. But five members of the Committee—including Senators Taft and Ball—were dissatisfied with the reported bill because they believed it was not stringent enough in its regulation of some union activities. They filed a statement of Supplemental Views in which they advised that they would seek amendments on the floor, including one similar to the present Section 8 (b) (1) (A). S. Rep. 105, 80th Cong., 1st Sess., p. 50–56, I Leg. Hist. 456–462. And they indicated that their purpose in seeking the latter amendment (see Bd. br. 22–23) was to outlaw conduct on the part of unions, which, if engaged in by an employer, would be violative of Section 8 (a) (1).

Moreover, in the debates on Section 8 (b) (1) (A), the sponsors of the provision made clear that one of the situations intended to be covered thereby was where a union resorted to economic pressure for the purpose of foisting itself upon employees who did not want to be represented by it (see Bd. br. 25–26). Indeed, since an employer violates Section 8 (a) (1) if he grants exclusive recognition to a minority union (Bd. br. 23), encompassing union pressure to obtain this illegal object was essential to give 8 (b) (1) (A) the equivalence in scope sought by its sponsors.

In these circumstances, the adoption of Section 8 (b) (1) (A) on the Senate floor, as an amendment to the Committee bill, can only be viewed as an enlargement upon the provisions of the bill as reported by the Senate Committee—including Section 8 (b) (4) (C).[1] And, since the Senate bill as thus amended was the bill ultimately adopted by both Houses, this conclusion respecting the relation between Sections 8 (b) (1) (A) and 8 (b) (4) (C) carries over to the law as enacted. The fact that Section 8 (b) (1) (A) was intended to augment the provisions of Section 8 (b) (4) (C), insofar as union efforts to compel recogni-

[1] Contrary to the Union's contention (br. 36–40), Section 8 (b) (4) (C) does not become redundant if Section 8 (b) (1) (A) were construed to cover union efforts to compel recognition. As we have shown (Bd. br. 31–34), the two provisions have different roles to play. In Section 8 (b) (4) (C) Congress sought to protect the integrity of an outstanding Board certification against economic attacks by a rival union. That is, until revoked under the peaceful procedures of the Act (e. g., a decertification proceeding under Section 9 (c)), the certification was entitled to presumptive validity, even though the rival union may have, in the meantime, succeeded in winning a majority of the employees away from the certified union. In short, Section 8 (b) (4) (C) would bar picketing for recognition even by a majority union—a not infrequent situation where the outstanding certification is of several years duration. On the other hand, Section 8 (b) (1) (A) applies where there is no outstanding certification and the union seeking recognition does not represent a majority of the employees.

Nor is there substance to the Union's further contention (br. 37) that "the view that Section 8 (b) (4) (C) prohibits majority strikes or picketing for recognition in the face of an unrescinded certification of a minority union commands the assent of only two of the five members of the Board." In the *Paint Makers* (*Andrew Brown*) case, cited by the Union (br. 37, n. 46), four members of the Board specifically adopted this view.

tion were concerned, is confirmed, furthermore, by the House conferees. They acceded to Section 8 (b) (1) (A) of the Senate Bill upon the assumption that the provisions of Section 12 (a) of the House bill, which outlawed in specific terms, *inter alia,* minority picketing for recognition, were unnecessary because "many of the matters covered [therein] * * * are also covered in [Section 8 (b) (1) (A) of the Senate bill]" H. Conf. Rep. 510, 80th Cong., 1st Sess., pp. 59, 42, I Leg. Hist. 563, 546. (See also, Bd. br. 30–31.)[2]

B. Nor is the Union's contention that Section 8 (b) (4) (C) goes as far as Congress desired, in proscribing union efforts to compel recognition, advanced by the fact that numerous proposals have been made since the passage of the 1947 amendments to outlaw minority picketing for recognition in circumstances not covered by 8 (b) (4) (C), but that these efforts have not succeeded (br. 15–18). It is commonplace that at-

[2] The foregoing analysis is not altered by the Union's reliance (br. 10) on the passage in the Conference Report which, repeating language taken from the Senate Report, states that "the primary strike for recognition (without a Board certification) was not prohibited" H. Conf. Rep. 510, 80th Cong., 1st Sess., 43, I Leg. Hist. 547; S. Rep. 105, 80th Cong., 1st Sess. 22, I Leg. Hist. 428. This statement was made in describing Section 8 (b) (4) (B), which prohibits a union, even though it may represent a majority of the employees, from inducing secondary strikes to put pressure on the primary employer to grant the recognition the union is entitled to. In this context, it was necessary to make clear that such a majority union remained free to compel recognition by striking the primary employer himself, and accordingly the reassuring statement quoted above was made.

tempts are frequently made in Congress to clarify legislation, even though such clarification may not actually change existing administrative or judicial interpretations. Accordingly, the mere fact that amendments to existing legislation have been proposed does not necessarily indicate that the power sought to be articulated does not now exist. See *Wong Yang Sung* v. *McGrath,* 339 U. S. 33, 47.

For example, several unsuccessful attempts were made subsequent to 1947 specifically to ban secondary boycotts implemented through "hot cargo" clauses—both before and after the Board had reached the conclusion that such clauses did not constitute a defense to a Section 8 (b) (4) violation. See, e. g., 100 Cong. Rec. 6121, 6125–6 (1954), 102 Cong. Rec. 8021–8022 (1956). Indeed, the recent effort in the 85th Congress to amend the Act contained not only proposals relating to minority picketing for recognition, as the Union points out (br. 15–17), but also proposals which would expressly have removed "hot cargo" clauses as a defense to secondary boycott violations under the Act. See S. 3099, 85th Cong., 2nd Sess., Sec. 3, introduced on January 23, 1958, immediately following the President's message recommending such action (reported in 41 L. R. R. M. 78, 81). These proposals respecting "hot cargo" clauses, however, did not preclude the Supreme Court from concluding that Congress had already achieved their effect by the general language contained in Section 8 (b) (4). See *Local 1976* v. *N. L. R. B.*, 357 U. S. 93. Similarly, neither should the recent proposals dealing with recognition picketing have any decisive bearing

on whether that subject is already covered by the general language of Section 8 (b) (1) (A).

C. The Union stands on no better footing in attempting to explain away the instances in the legislative debates wherein Senators Taft and Ball illustrated the meaning of Section 8 (b) (1) (A) by allusions to peaceful picketing like that involved in this case, on the ground that they later backtracked (br. 26). No disavowal of these important illustrations (see Bd. br. 25–26) ever occurred. On the contrary, when Senators Taft and Ball agreed to the deletion of the phrase "interfere with" from Section 8 (b) (1) (A), which the Union asserts reflects a "change in mood" as to the Senate's understanding of the Section's coverage (br. 26), they did so only because they did not consider that any change in meaning was thereby effected (see Bd.'s br. 29, n. 13). In sum, the examples enumerated in the legislative debates which show that the coercion proscribed by Section 8 (b) (1) (A) could result from peaceful picketing are no less important in determining the scope of that Section than are those which describe coercion by physical force.

It is also significant that the Union does not contest, as indeed it cannot, our showing (opening br. 22–24) that the central purpose of Section 8 (b) (1) (A), as revealed by its legislative history, was to impose on unions sanctions equivalent to those already imposed on employers by Section 8 (a) (1). To be sure, the Union suggests that the differences between unions and employers prevent a mechanical application of the two provisions to like situations (br. 26–27). But, al-

though this may be so in some instances (see the discussion in n. 36, p. 27, of the Union's brief), it is manifestly not so in all instances.[3] And there can be no doubt that Congress intended an even-handed application of Sections 8 (a) (1) and 8 (b) (1) (A) insofar as possible. See *Capital Service* v. *N. L. R. B.,* 204 F. 2d 848, 852 (C. A. 9). The case of minority picketing for recognition presents a most appropriate and practicable occasion to give effect to this intended principle of equivalence. For, as shown in our opening brief (p. 23) and noted *supra* (p. 3), an employer violates Section 8 (a) (1) if he accords exclusive recognition to a minority union, and there is no valid reason why a union should be under any lesser obligation to respect the right of employees freely to select their own representative.

D. The Union relies on *Electrical Workers* v. *N. L. R. B.,* 341 U. S. 694, to support its argument that Section 8 (c), which protects *noncoercive* speech (Bd. br., 37–41), immunizes its picketing in this case. In that case, as we have shown (*ibid.,* pp. 39–40), the Supreme Court limited the protection of Section 8 (c)

[3] The Union's argument is reminescent of one made by Senator Morse during the legislative debate on Section 8 (b) (1) (A). He contended that Section 8 (b) (1) (A) was unnecessary because: (1) insofar as it was intended to cover physical coercion, this matter was already subject to regulation by the local authorities; and (2) insofar as it was intended to cover economic coercion by unions, the Act's ban on closed shops adequately covered that problem and, in any event, economic threats by a union were not as "dangerous" as those by an employer because the union was not in the same position to carry out the threat. See II Leg. Hist. 1192–1193, 1195–1197. The Senate rejected these arguments in enacting Section 8 (b) (1) (A).

to "noncoercive speech * * * in furtherance of a *lawful* object." [Emphasis supplied.] 341 U. S. at 704. This limitation places Section 8 (c) to one side in the instant case, for the Union's object was concededly unlawful.

But the Union asserts that the unlawfulness of the object was not the reason why the Supreme Court declined to apply Section 8 (c) in *Electrical Workers,* which involved peaceful picketing designed to induce a secondary boycott. Rather, the Union seeks to explain the holding in that case on the ground that the Act's secondary boycott provisions, unlike Section 8 (b) (1) (A), were meant to reach peaceful picketing; accordingly, unless Section 8 (c) were found to be inapplicable to the secondary boycott provisions, they would be redundant, having a scope no greater than that of Section 8 (b) (1) (A), which admittedly applied to nonpeaceful picketing (Un. br. pp. 30–31).

Apart from the clear statements in the Supreme Court's opinion which show that the illegality of the Union's objective was a decisive consideration in finding Section 8 (c) inapplicable, the short answer to this argument is that nothing in the *Electrical Workers'* opinion warrants the Union's initial premise that the Court viewed Section 8 (b) (1) (A) as limited to nonpeaceful conduct. The fact that this Section covers nonpeaceful picketing, as the Supreme Court pointed out, may well show that other provisions of the Act meant to go beyond that coverage (see, for example, the discussion *supra,* pp. 3–5, of the interrelation between Sections 8 (b) (1) (A) and 8 (b)

(4) (C)). It does not follow, however, that the Court was thereby concluding—for indeed it had no occasion to consider such question—that nonpeaceful conduct was all that Section 8 (b) (1) (A) covered. Moreover, as this Court has recognized in *Capital Service,* peaceful picketing may impose economic coercion, and when it does, as here, Section 8 (b) (1) (A) does in fact encompass it.

E. Equating picketing with striking, the Union further argues that the protection given in Section 13 of the Act to strike conduct, "except as specifically provided for [elsewhere in the Act]," operates to save the picketing in this case from Board regulation (br. pp. 32–33). But if the Board is correct in its conclusion that the Union's picketing constituted restraint and coercion within the meaning of Section 8 (b) (1) (A), then Section 13 has no application. For Section 8 (b) (1) (A) "is a specific provision and if it is violated Section 13 is of no help." *Truck Drivers Union, Local 728* v. *N. L. R. B.,* 249 F. 2d 512, 515 (C. A. D. C.), certiorari denied, 355 U. S. 958. And it is of no consequence in this connection that Section 8 (b) (1) (A) is not expressly directed against strikes. Neither is Section 8 (b) (2), but the Union concedes (br. 53) that its picketing violated that provision, regardless of Section 13. The Union also readily admits (br. 19–28) that Section 8 (b) (1) (A) condemns violent picketing, again notwithstanding Section 13's immunizing language. The short of the matter is that the question in this case does not turn on Section 13; if the Union's picketing is coercive within the meaning of Section 8 (b) (1) (A), Section

13 can be "of no help." *Truck Drivers Union, Local 728, supra.*

II. The contention that use of the "We Do Not Patronize" list is not violative of the Act

The Union argues that, even if Section 8 (b) (1) (A) may be deemed to reach its peaceful picketing, that provision cannot reach its circulation of the "We Do Not Patronize" list, for such conduct, unlike picketing, is in no sense coercive (Un. br., 42–52). Indeed, the Union contends (br. 55) that the use of such list may not even be found to constitute a violation of Section 8 (b) (2). There is no merit to these contentions.

A. The distinction which the Union would draw between its peaceful picketing and its use of the "We Do Not Patronize" list overlooks that it is the impact of the Union's activity on Alloy and its employees which is relevant for purposes of Section 8 (b) (1) (A). That is, granted that an unfair list is less coercive than picketing insofar as inducing third parties to cease doing business with Alloy is concerned, the fact remains that both techniques are designed to achieve the same result—i. e., a curtailment of Alloy's business—and it is that which has the coercive or restraining effect on Alloy's employees that Section 8 (b) (1) (A) proscribes. Accordingly, we submit that the Board properly concluded (see Bd. opening br. 21–22, 38–39) that no distinction may be drawn, for purposes of Section 8 (b) (1) (A), between picketing and other equally effective techniques for damaging the primary employer's business.

Nor may the Union elude this conclusion by relying on Section 8 (b) (4) (B). That is, the Union notes that, in forbidding, in Section 8 (b) (4) (B), secondary boycott activity designed to obtain recognition, Congress banned only inducement of strike action by neutral employees, and did not bar unions from making appeals directly to employers and consumers (br. 43–45). The Union then assumes that, since Section 8 (b) (4) (B) leaves open such appeals, Congress would not have reached them under any other provision of the statute, and thus its appeals in this case, being directed to other employers and consumers,[4] must be lawful.

The fact that Congress in the secondary boycott provisions, including Section 8 (b) (4) (B), drew the line at strike action and did not proscribe appeals to the employers or consumers does not, as the Union assumes, necessarily determine the scope of Section 8 (b) (1) (A).[5] First, as was true with Section 8 (b) (4) (C) (see *supra*), Section 8 (b) (4) (B) was in the bill before Section 8 (b) (1) (A) was adopted, and thus the conclusion is strong that the latter was intended to enlarge upon the scope of the preexisting

[4] It may be questioned, however, whether the unfair list was not in part at least an employee appeal, rather than a pure consumer appeal, for the Union also inconsistently stresses that "it is fair to infer that * * * [the] readers [of the publication in which the 'We Do Not Patronize' list appeared] are principally workers" (br. 52).

[5] The quotations from *Local 1976* v. *N. L. R. B.*, 357 U. S. 93, relied on by the Union (br. 44, 46), discuss the problem only in the context of the secondary boycott provisions, the Court having no occasion to consider Section 8 (b) (1) (A).

provisions. Second, the secondary boycott provisions of the Act were intended to foreclose secondary activity irrespective of whether the union's ultimate demands were proper or, indeed, even if accession to them by the primary employer was required by the Act, e. g., recognition of a noncertified majority union. Thus, in leaving certain types of secondary action available to unions, the reasonable inference to be drawn is that Congress so intended only insofar as the ultimate objectives sought were themselves legitimate. See n. 2, *supra,* p. 5. Stated otherwise, it is not reasonable to infer, as does the Union, that the residual lawful area of secondary activity was meant to immunize conduct, which as we have shown with respect to the employer appeals and the "We Do Not Patronize" list here, seeks to further objectives which are clearly unlawful under the Act. Third, this Court, in *Capital Service,* has in effect already rejected the contention that consumer appeals, not covered by the secondary boycott provision, are necessarily lawful. For the secondary picketing there found to be violative of Section 8 (b) (1) (A) (at the customer entrances of the store) was deemed to be a consumer appeal, as distinguished from the delivery entrance picketing, which was an appeal to secondary employees and thus violative of Section 8 (b) (4) (A). See 204 F. 2d 848, 851–852, 854.

B. the Union's contention that its use of the "We Do Not Patronize" list and its appeals to Alloy's customers are constitutionally protected (br. pp. 47–52) is constructed on factual assumptions which are

contrary to the Board's findings in this case. Thus, the Union asserts that circulating the "We Do Not Patronize" list sought only the "performance of a lawful act" by Alloy's customers, and that in any event the "unimpeachable end" toward which the list was directed was "to inform the public that the Alloy Manufacturing Company do[es] not employ union help * * *" (Un. br. 48). The Board found, however, that the Union's appeals to Alloy's customers were not for this purpose or any of the other purposes hypothesized by the Union in its brief (pp. 48–51), but were in furtherance of the illegal goal of forcing Alloy to accord exclusive bargaining rights and a union-security agreement (R. 22, 21).[6] Accordingly, the Union's constitutional argument must be considered in the light of these findings.

So viewed, the argument boils down to the contention that the Constitution guaranteed to the Union the right to use speech[7] to induce Alloy's customers and others to boycott its products for the purpose of attaining the twin illegal objectives of exclusive recog-

[6] The quotation in the Union's brief (p. 48), to the effect that its purpose in circulating the "We Do Not Patronize" list was simply to inform the public, is taken from a self-serving letter sent by the Union to Alloy in which it denied that recognition was its objective (R. 130). The Board, of course, found to the contrary, and we do not understand that the Union means to dispute the Board's finding in this regard. See Un. br. 53; Bd's. opening br. 12–15.

[7] In this argument, the Union exempts its picketing activity, on the ground that picketing may be viewed as more than "speech," but asserts that appeals to customers and listing an employer on an unfair list are "pure speech" (Union br. 47).

nition and a union-security agreement.[8] Manifestly, the Constitution affords no such license.

As we have shown in our opening brief (pp. 37–41), speech which is designed to further illegal acts is not protected by the First Amendment. The Supreme Court made this plain in *Giboney* v. *Empire Storage & Ice Co.,* 336 U. S. 490. There, in rejecting the contention that the union's efforts to elicit an agreement which would have violated the state anti-trust laws was privileged free speech because the union merely picketed with placards advertising that the company in dispute was selling ice to non-union firms, the Court stated (*Id.,* at 502): "But placards used as an essential and inseparable part of a grave offense against an important public law cannot immunize that unlawful conduct from * * * control." See also, *Electrical Workers* v. *N. L. R. B.,* 341 U. S. 694, 704.

Nor is this principle rendered inapposite here by the Union's contention (br. 48) that, since it is "entirely legal for the customers to whom the appeal is addressed to withhold their patronage from Alloy," the "persuasion directed to them to do so seeks of them nothing but their performance of a lawful act." Even if the customers themselves could voluntarily decide to boycott Alloy, it does not follow that it would be lawful for the Union to induce such action.[9] Indeed, assuming, as the constitutional argument must, that Sec-

[8] The Union's argument drives it to conclude that even appeals in furtherance of an illegal union-shop are immune from regulation (see Union br. 53, n. 58; 54–55).

[9] E. g., although Section 8 (b) (4) (A) does not prevent neutral employees, as individuals, from quitting work, it does proscribe union inducement of such work stoppages.

tion 8 (b) (1) (A) reaches boycott appeals in furtherance of a minority union's recognition objective, the Union's requests to customers and others not to buy Alloy's products would be as illegal as union requests directed to secondary employees (which would clearly be violative of Section 8 (b) (4) (A)). Moreover, accepting the union's premise that the appeals to the customers themselves were not unlawful, the fact remains that, on the Board's findings, they were designed to force Alloy to commit illegal acts. In these circumstances, the Union utilized speech to further an unlawful course of conduct no less than if it had appealed directly to Alloy to accede to its illegal demands. In short, the Union cannot obtain constitutional protection for conduct otherwise subject to regulation merely by enlisting an intermediary to further its illegal objective.

Similarly, there is no merit to the Union's further contention (br. 51–52) that, even if its customer appeals could possibly bring about a "substantive evil," there is no showing that they would do so with "that immediacy which would justify their suppression as a clear and present danger." The Board's interpretation of Section 8 (b) (1) (A) assumes that Congress made the judgment that there was a real likelihood that the public interest would be adversely affected if labor organizations remained free to blacklist an employer and make boycott appeals to his customers for the purpose of forcing him to recognize the union contrary to the wishes of his employees. If this conclusion is not beyond reason, Congress could curb the activity without requiring an individualized showing

of "danger" in each particular case. As the Supreme Court has pointed out: "[I]nsofar as the problem is one of drawing inferences concerning the need for regulation of particular forms of conduct from conflicting evidence, this Court is in no position to substitute its judgment as to the necessity or desirability of the statute for that of Congress. * * * [E]ven restrictions on particular kinds of utterances, if enacted by a legislature after appraisal of the need, come to this Court 'encased in the armor wrought by prior legislative deliberation.'" *A. C. A.* v. *Douds,* 339 U. S. 382, 400–401.

Preserving the right of employees to be free from coercion in their selection of a bargaining representative is certainly a matter of legitimate legislative concern. See *Building Service Employees Union* v. *Gazzam,* 339 U. S. 532; *Teamsters Union* v. *Vogt,* 354 U. S. 284. Cf. *Teamsters* v. *Hanke,* 339 U. S. 470; *Giboney* v. *Empire Storage & Ice Co.,* 336 U. S. 490. Moreover, an appeal to customers to boycott the employer with whom the union has its dispute has a clear and present propensity of effecting the coercion which Congress sought to avoid no less than the employee inducements proscribed in Section 8 (b) (4). Cf. *Electrical Workers* v. *N. L. R. B.,* 341 U. S. 694, 705. Accordingly, if the clear and present danger test may be deemed applicable to the conduct here, Congress, in enacting Section 8 (b) (1) (A), satisfied that test.

III. The contention that the Board's order is too broad

Finally, the Union contends that the Board's remedial order in this case is too broad in the light of the violations found (Un. br. 55–57). The portion

of the Board's order complained of requires the Union to cease and desist from "Restraining or coercing employees of Alloy Manufacturing Company in the exercise of the rights guaranteed in Section 7 of the Act" (R. 24). The Union apparently would limit the scope of this provision to the specific picketing and customer appeals utilized by it in this case (br. 55–57). But it is settled that orders of the breadth of that in issue are proper where "the record disclose[s] persistent attempts by varying methods to interfere with the right of self-organization in circumstances from which the Board or the court found or could have found the threat of continuing and varying efforts to attain the same end in the future." *N. L. R. B.* v. *Express Publishing Co.,* 312 U. S. 426, 438; *N. L. R. B.* v. *Globe Wireless,* 193 F. 2d 748, 752 (C. A. 9); *N. L. R. B.* v. *Sunbeam Electric,* 133 F. 2d 856, 861–862 (C. A. 7); see *N. L. R. B.* v. *Jones Lumber Co.,* 245 F. 2d 388, 390 (C. A. 9). The order in this case is fully warranted under this principle. As shown in our opening brief (pp. 2–7, 13–15), the Union consistently displayed throughout the events in this case an utter disregard for the central policy of the Act that employees be guaranteed a free choice respecting matters of representation and union membership. To negate this fundamental principle, the Union sought by a variety of techniques—picketing, oral appeals to Alloy's customers, and circulation of the "We Do Not Patronize" list—to harm Alloy's business and thereby threaten the livelihood of its employees. The Board, in those circumstances, could reasonably conclude that the

Union's conduct reflected an intent to gain representation rights and a compulsory union membership agreement at any cost, and that a broad cease and desist order was therefore necessary. Cf. *McComb* v. *Jacksonville Paper Co.*, 336 U. S. 187, 192.[10]

CONCLUSION

For the foregoing reasons and those stated in the Board's opening brief, it is respectfully submitted that a decree should be entered enforcing the Board's order in full.

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[10] Cases in which this Court has stricken broad cease and desist orders entered by the Board (e. g., *N. L. R. B.* v. *California Date Growers Assoc.*, decided September 29, 1958, 42 LRRM 2805; *N. L. R. B.* v. *Shuck Construction Co.*, order modified May 16, 1957, 40 LRRM 2167) have involved violations which were not prompted by the kind of flagrant opposition to the Act's policies which the record reveals in this case.

U. S. GOVERNMENT PRINTING OFFICE: 1958